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جامعة نايف العربية للعلوم الأمنية

Naif Arab University for Security Sciences



قسم: العدالة الجنائية

تخصص: التشريع الجنائي الإسلامي

ملخص رسالة ماجستير

عنوان الرسالة: العقوبة بإتلاف المال .. دراسة تأصيلية مقارنة تطبيقية

إعداد الطالب: سالم بن مبارك الخارفي

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مشكلة البحث:

إن هذا العصر الحاضر مليء بأنواع شتى من الجرائم، تتميز بالدهاء والسرعة في انتشارها، وضخامة أعداد الضحايا منها، وذلك بسبب التطور والتقدم العلمي، والتقني، وتشابك المعلومات وسرعة تبادلها، فباستطاعتك أن تحصل على أخبار أي بلد كان، وتطلع على مزيد من العجائب والغرائب، فتعلم الناس من غيرهم وسائل وطرقاً مختلفة من الجرائم، ليشفي غليلاً، أو يأخذ مالا، بغير وجه حق. فظهور هذه الأنواع المختلفة، والمتشابهة، والشائكة، من الجرائم يحتم على المعنيين بحفظ الأمن أن يدرسوا الوسائل والطرق التي تمنع حدوثها، أو تزرع الخوف منها، أو تحد من انتشارها ووقوعها.

ومن هذه العقوبات التي تمنع، أو تخفف، من الجرائم، عقوبة الإتلاف، فإنما تساهم في الواقع الملموس بتحقيق الأمن والأمان بإذن الله تعالى، ولذلك فهي بحاجة إلى دراسة مستقلة تميزها عن غيرها، وذلك بربط ما في النظام الوضعي بما في الفقه الإسلامي، وتبين حقيقتها، وأنواعها، وهدفها، والشكل الذي يجب أن تتم فيه عقوبة إتلاف المال، فلذا تكمن مشكلة الدراسة في التساؤل الرئيس التالي:

ما عقوبة إتلاف المال في الفقه الإسلامي والقانون الوضعي، ومدى مشروعيتها؟

أهمية البحث:

تبرز أهمية الدراسة في النقاط الآتية:

١. أن لها الأثر البالغ في حفظ الأمن، وردع المخالفين، وكف شرهم، ولا سيما في هذا العصر الذي أصبح فيه المال من أهم ما يتطلع إليه الناس.
٢. أن عقوبة الإتلاف من العقوبات المنتشرة في الأنظمة المعاصرة، فكثير من الجرائم ما تنتهي بعقوبة الإتلاف في ازهاق الروح تماماً، أو إتلاف عضو كقطع يد السارق، أو إتلاف مواد محرمة أو ضارة، منفردة أو مضافاً إليها غيرها من العقوبات على سبيل التخفيف أو الوجوب.
٣. أن جمع هذا الموضوع قد يكون فيه إغناء للجهات المعنية في تقرير وتحديد عقوبة الإتلاف على المخالفين.

أهداف البحث:

تهدف الدراسة إلى ما يأتي:

- أ- بيان حقيقة العقوبة بإتلاف المال في الفقه الإسلامي، مقارنةً بالقانون الوضعي.
- ب- إيضاح العناصر التي يشرع إتلافها، والتي لا يشرع إتلافها.
- ت- بيان الطرق التي يتم من خلالها الإتلاف.
- ث- حماية المال الخاص والعام.

تساؤلات البحث:

يمكن أن تحدد التساؤلات بصورة أدق فيما يلي:

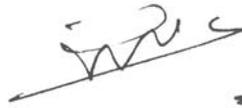
- ١- ما حقيقة عقوبة الإتلاف بالمال في الفقه الإسلامي والقانون الوضعي؟
- ٢- ما العناصر التي يشرع إتلافها ، والتي لا يشرع إتلافها؟
- ٣- ما الطرق التي يتم من خلالها الإتلاف؟

منهج البحث:

يستخدم الباحث المنهج الاستقرائي التحليلي التأسيلي لمعرفة العقوبة بإتلاف المال في الفقه الإسلامي، وفي القانون الوضعي.

أهم النتائج:

١. الأصل العام يقتضي أن مال المسلم حرام إتلافه والاعتداء عليه، وتجب صيانته وحفظه وردّه إليه إن فقده، والنصوص متضاربة على ذلك من مثل خطبة النبي صلى الله عليه وسلم يوم النحر حين أعلن حرمة المسلم في دمه وماله وعرضه.
٢. يعود الخلاف في مسألة العقوبة بإتلاف المال إلى الخلاف في جواز التعزير بالأموال، مع اتفاق الفقهاء على جواز التعزير مطلقاً، واتفاقهم على أن التعزير بالمال كان في ابتداء الإسلام، واختلفوا في هل التعزير بأخذ المال محكم، أم طاله النسخ؟
٣. من الأموال التي لا يجوز إتلافها والاعتداء عليها كل مال محترم، فهم المسلم عن امتنانه وابتداله، وأمر أن يحفظه ويصونه عما لا يليق به، وأعظم هذه الأشياء المصحف التي تحمل في طياتها القرآن الكريم، وكذلك كتب الحديث النبوي.
٤. العقوبة بإتلاف المال عقوبة تعزيرية يراعى فيها المصلحة العامة والخاصة، فلا يجوز التمادي فيها وظلم العباد في أموالهم بغير حق.
٥. تعريف الإتلاف اصطلاحاً: لا يبعد معنى الإتلاف في الاستعمال الفقهي عنه في الاستعمال اللغوي، مما جعل كثيراً من الفقهاء يستغنون عن وضع حدّ للإتلاف في إطار فقهي معين، فتلخص من هذا أن الاعتبار في ضبط معنى الإتلاف هو المعنى اللغوي، وعليه سار الفقهاء حيث كثر ذلك في اطلاقهم لكلمة الإتلاف ويريدون ما يؤدي إلى ذهاب المال وزواله كله أو بعضه.
٦. أجمع أهل العلم باللسان العربي على أن المراد بالمال: كل ما يملك من جميع الأشياء.
٧. الألفاظ المشابهة للإتلاف وتأخذ معناها مع فروق لغوية دقيقة هي: التلف، والإفساد، والإهلاك، والإحراق.
٨. بالنظر في أدلة أصحاب القول الثاني يتبين رجحان قولهم بجواز العقوبة بإتلاف المال وأخذه، ولضعف أدلة المانعين ومناقشتهم، في دعوى أن العقوبة منسوخة، إذ لم يعرف تاريخ المتقدم عن المتأخر، وكل ما استدلل به المانعون من عموميات تحريم مال المسلم، مخصوصة بأدلة معاقبة الجاني بأخذ ماله أو إتلافه.
٩. الضوابط في العقوبة بإتلاف مال المسلم، فيمايلي:
 - أن تكون العقوبة بإتلاف المال قد صدرت بحكم شرعي، من قاض شرعي.
 - وأن تكون العقوبة بناءً على فعل جرمي استوجب معاقبته بإتلاف ماله.
 - تحديد نوع المال المتلف ومقداره، وكيفية إتلافه.
 - ألا يكون فعل الجاني للجريمة بناءً على إكراه غيره له.
١٠. المقرر عند أهل العلم أن للمحتسب صلاحيات في حال الاحتساب والإنكار، وذكروا ما يحق للمحتسب أن يتلفه ولا ضمان عليه، وما لا يحق له أن يتلفه وعليه الضمان إن أتلّفه، وفرّقوا بينه وبين والي القضاء، فإن القاضي له من والولاية ما ليس للمحتسب، فولايته عامة، يحكم في الحدود والقصاص والتعزير، واحتسب في التعزير فقط.



جامعة نايف العربية للعلوم الأمنية

Naif Arab University for Security Sciences



department: Criminal Justice

specialization: Islamic penal legislation

ma.thesis Summary

thesis Title: Capital punishment destroyed .. Tasilih study compared Practical

prepared by: Salem bin Mubarak Maharvi

Supervisor: d. Musleh bin Abdulhi-Naggar

thesis defence Committee:

D. Musleh bin Abdulhi-Naggar supervisor and a decision

D. Yousef Bin Abdullah Shubaily member

D. Marwan Sheriff gahf member

defence Date: 9/3/1429 AH m 17/3/2008

Research problem:

That this present time is full of various types of crimes, are insidious and speed of deployment, and the large number of victims, and because of the evolution of scientific progress, and technical, and the complexity and speed of information exchange, that you can get news any country, and looked forward to more of the wonders and hallucinations, learn from other people's ways and means of various crimes, to quench Glela, or takes money, unjustly.

The emergence of these different types, and interlocking, and thorny, of the crimes involved makes it imperative for security to examine the means and ways to prevent them, or planted fear, or limit the spread and falling.

These penalties prevent, or mitigate, the crimes, the death scene, it actually contributes to the achievement of tangible security and safety, God Almighty, and therefore they need an independent study distinguishes it from others, linking in the positive, including Islamic jurisprudence, and to indicate that she really , and types, and purpose, and the form must be punished by destroying money, Vlma study the problem lies in asking the President follows:

Capital punishment is destroyed in Islamic jurisprudence and law, and the legitimacy?

research importance:

Highlights the importance of the study in the following points:

1. That the impact of the maintenance of security, and to deter violators, wanted their evil, especially in this era in which its money from the most important aspiration of the people.
2. The death scene of the Penal deployed in contemporary systems, many of the crimes are ending the death scene in a loss of spirit completely, or damaged by a member Kkta burglar, or destroy harmful substances are prohibited, either alone or in addition to other penalties for choice or duty.
3. That the collection of this subject might be it a subsidy for actors in the report of the death scene to identify violators.

Research objectives:

Mayati study aims to:

A - a fact destroyed capital punishment in Islamic jurisprudence, as compared to positive law.

B - clarify the elements that initiate destruction, which does not begin destroyed.

T - illustrate the ways through which the scene.

W - the protection of private and public money.

Research hypothesis/questions:

Queries can be defined more accurately as follows:

- 1 - is the fact the death scene money in Islamic jurisprudence and positive law.?
- 2 - What elements that initiate destruction, which does not begin destruction?.
- 3 - What methods by which destruction?.

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research methodology:

Researcher uses interpolation method to determine the analytical Altaeseli destroyed capital punishment in Islamic jurisprudence, and in the positive law. main results:

1. Original requires that public money is haram destroyed and abuse, and must be maintained and peace-response mechanism that lost, and that concerted texts such as the sermon the Prophet peace be upon him on eroded when announced in the sanctity of Muslim blood, and his introduction.
2. The difference is the question of capital punishment destruction to the difference in the passport ruler funds, with the agreement scholars may never ruler, and agreed that the abrogation money was starting to Islam, disagreed whether ruler taking money tight, or Talh copies?.
3. Of the funds may not be destroyed and abuse by all decent money, forbade Muslims from degradation and Aptmalh, and ordered that keeps it protected and what is inappropriate, and the greatest of these things Crossing, which carries with it the Koran and the Hadith as well as books.
4. Capital punishment destroyed death punitive sensitive public and private interest, it may be going too far and injustice worshippers money unjustly.
5. Definition of the Convention, the scene: not absolve the meaning of the scene in use jurist in language usage, making many of the scholars perspectives to put an end to the destruction in the framework of a particular doctrinal, summarized this in mind that the meaning of the scene was seized on the language, and it marched scholars as much so Atlaqathm in a speech to the scene and want to go to the leading money and its removal in whole or in part.
6. The entire Arab scholars tongue to be money: all that owns all things.
7. Words of similar meaning destroy and take with precise linguistic differences are: damage, and corruption, and depreciation and incineration.
8. Given the owners say evidence shows the preponderance of the second sentence may be saying the destruction and taking money, and weak evidence Almaenain and debate in a proceeding that the punishment copied, Azlm know about the late date of the advance, and everything Astdl by Inhibitors of generalities outlaw money is, specific evidence to punish the offender take doomed or destroyed.
9. Controls on capital punishment destroyed Muslim following:
 - The penalty money has been destroyed by illegal, a judge of the Islamic Sharia.
 - The penalty shall be based on a criminal act necessitated punished destroyed doomed.
 - Identification of the type and amount of money destructive, and how destroyed.
 - may not be the perpetrator of the crime act at the other compulsion him.
10. Almottagrr when scholars that the tax powers in the event of calculation and denial, and stated that they are entitled to tax that the shoes do not guarantee it, and had no right to shoes and guarantee that it replaces, and dispersed between him and to the judiciary, the judge has a mandate is not to tax, a general His mandate , governs the border and retribution and ruler, the ruler accountant only.

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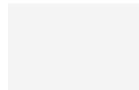
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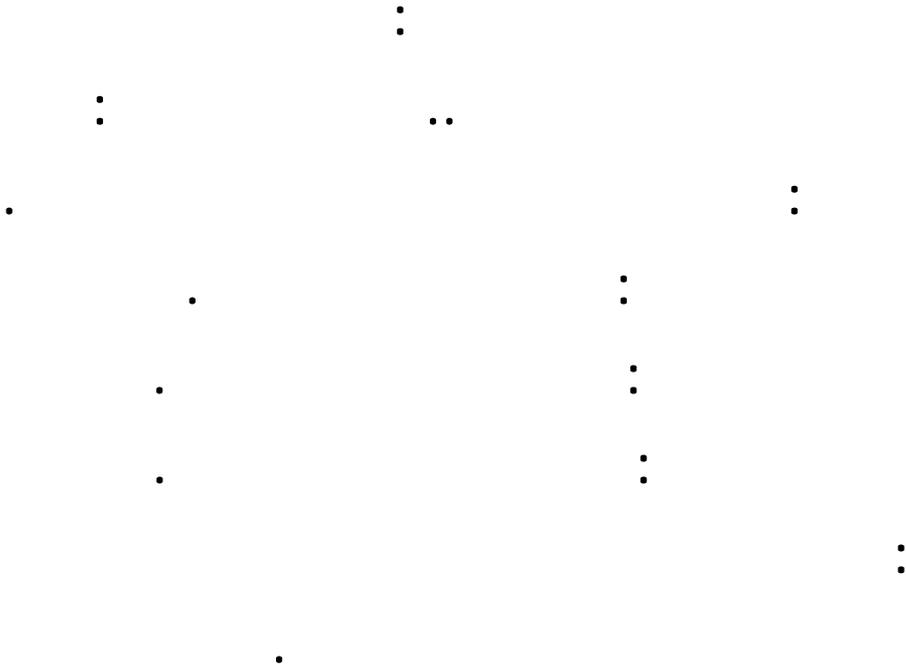
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